



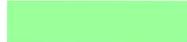
U.S. Citizenship  
and Immigration  
Services

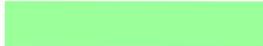
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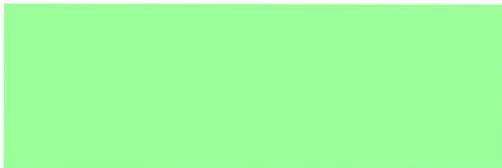
OFFICE: LOS ANGELES

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Los Angeles, California denied the waiver application and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the previous decision of the AAO is affirmed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with her lawful permanent resident spouse and U.S. citizen children.

The Field Office Director determined that the applicant had failed to demonstrate that a qualifying relative would experience extreme hardship upon denial of her waiver application and denied the application accordingly. *See Decision of Field Office Director*, dated May 7, 2009. On appeal, the AAO determined that the applicant is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), and dismissed the applicant's appeal on this basis. *See Decision of the AAO*, dated April 20, 2012.

On motion, counsel for the applicant asserts that the finding that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act is premature, as the Ninth Circuit Court of Appeals, had yet to issue a decision in *Garfias-Rodriguez v. Holder*, 702 F.3d 504 (9th Cir. 2012). Counsel contends that the applicant has established that her spouse and children would experience extreme hardship upon her removal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant attempted to enter the United States on May 30, 1998, by presenting a Form I-94 in the name of another individual and a photo-substituted temporary U.S. resident stamp. Accordingly, the applicant is inadmissible under section 212(a)(6)(C) of the Act for attempting to procure admission into the United States through willful misrepresentation. The applicant does not dispute this ground of inadmissibility on motion.

Section 212(a)(9) of the Act states in pertinent part:

....  
(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii)Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The record reflects that on May 30, 1998, the applicant was removed from the United States pursuant to section 235(b)(1) of the Act. The applicant subsequently entered the United States

without inspection in September 1998. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act.

An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than ten years since the date of the alien's last departure from the United States. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); see also *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C)(i) of the Act, the BIA has held that it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States and USCIS has consented to the applicant's reapplying for admission.

Aliens who reside within the jurisdiction of the Ninth Circuit Court of Appeals, however, may be eligible for consent to reapply for admission even if they are presently inadmissible under section 212(a)(9)(C)(i)(II) of the Act, if they meet specific requirements under the terms of *Duran-Gonzales v. DHS*, No. C06-1411(W.D. Wash., 2014) (settlement agreement).

The settlement agreement defines a class member as any person who:

1. Is the beneficiary or derivative beneficiary of an immigrant visa petition or labor certification filed on or before April 30, 2001, provided that, if the immigrant visa petition or labor certification was filed after January 14, 1998:
  - a. the beneficiary was physically present in the United States on December 21, 2000, or
  - b. If a derivative beneficiary, the derivative beneficiary or the primary beneficiary was physically present in the United States on December 21, 2000.
2. Is inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act ("INA"), because he or she entered or attempted to reenter the United States without being admitted after April 1, 1997, and without permission after having previously been removed;
3. Properly filed a Form I-485 (Application to Adjust Status) and Form I-485 Supplement A (Adjustment of Status Under Section 245(i)) while residing within the jurisdiction of the Ninth Circuit on or after August 13, 2004, and on or before November 30, 2007;
4. Filed a Form I-212 (Application for Permission to Reapply for Admission Into the United States After Deportation or Removal) on or after August 13, 2004, and on or before November 30, 2007;

5. Form I-485, Form I-485 Supplement A, and Form I-212 were denied by U.S. Citizenship and Immigration Services (“USCIS”) and/or the Executive Office for Immigration Review (“EOIR”) on or after August 13, 2004, or have not yet been adjudicated;
6. Is not currently subject to pending removal proceedings under INA § 240, or before the United States Court of Appeals for the Ninth Circuit on a petition for review of a removal order resulting from proceedings under INA § 240; and
7. Did not enter or attempt to reenter the United States without being admitted after November 30, 2007.

Settlement Agreement and Amendment of the Class Definition at 2-3, *Duran Gonzales v. DHS*, No. C06-1411 (W.D. Wash, 2014).

The record indicates that the applicant filed a Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal on October 10, 2002. As such, the applicant has not provided sufficient evidence to demonstrate that she meets the requirement of filing a Form I-212 on or after August 13, 2004, and on or before November 30, 2007.

As the applicant does not meet all the requirements necessary to establish that she is a class member under the terms of the settlement agreement, the applicant is not eligible for benefits under the settlement agreement. Consequently, the applicant has not shown that she is eligible for permission to reapply for admission into the United States after deportation or removal pursuant to section 212 (a)(9)(C)(iii) of the Act.<sup>1</sup>

The applicant’s last departure from the United States took place on May 30, 1998. The applicant entered the United States without admission or parole in September 1998 and has remained in the United States since that date. As such, the applicant has remained outside the United States for less than ten years since her last departure. Based upon this ground of inadmissibility, the applicant is currently statutorily ineligible to apply for permission to reapply for admission. As such, the applicant’s Form I-601 remains denied as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the prior AAO decision is affirmed.

**ORDER:** The motion is granted and the prior AAO decision dismissing the appeal is affirmed.

<sup>1</sup> The record reflects that the applicant’s Form I-212 was denied on April 2, 2014. There is no indication that the applicant has filed an appeal from that denial decision.